

1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE NORTHERN DISTRICT OF TEXAS**

3 **EDDIE WHITE,**

4 Plaintiff,

5 **v.**

6 **MIDLAND FUNDING, LLC, MIDLAND**
7 **CREDIT MANAGEMENT, INC., and**
8 **ENCORE CAPITAL GROUP, INC.,**

8 Defendants.

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Civil Action No.

Jury Trial Demanded

10 EDDIE WHITE, (“Plaintiff”), by his attorneys, KIMMEL & SILVERMAN, P.C., allege
11 the following against MIDLAND FUNDING, LLC (“Defendant Midland”), MIDLAND
12 CREDIT MANAGEMENT, INC. (“Defendant MCM”), and ENCORE CAPITAL GROUP, INC.
13 (“Defendant Encore) (collectively, “Defendants”):

16 **I. INTRODUCTION**

17 1. This is an action for damages brought by an individual consumer for Defendant’s
18 violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* (hereinafter
19 “FDCPA”), the Telephone Consumer Protection Act, and the Texas Debt Collection Act, Tex.
20 Fin. Code § 392 *et seq.*

22 **II. JURISDICTION AND VENUE**

- 23 2. Jurisdiction of this Court arises under 15 U.S.C. §1692k(d) and 28 U.S.C. §1331.
24 3. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

1 14. Plaintiff never entered into any contract with Verizon for this debt, is not a co-
2 signer, and did not guarantee payment of this debt.

3 15. Upon information and belief, the alleged debt arose out of transactions that were
4 for personal, family, or household purposes.

5 16. From April to May 2013, Defendants placed continuous and harassing telephone
6 calls to Plaintiff's cellular telephone from numbers, including but not limited to (800) 265-8825,
7 looking for Plaintiff's daughter, Candace. The undersigned has confirmed this number belongs
8 to Defendants.

9 17. Plaintiff received one (1) to two (2) calls per day, sometimes receiving as many as
10 four (4) calls in a single day.

11 18. Plaintiff asked Defendants to stop calling him, and informed them that his
12 daughter could not be reached at this number, that his daughter did not live with him, and that he
13 was in no way connected to the debt.

14 19. Despite this information, Defendants continued to place telephone calls to
15 Plaintiff.

16 20. During one conversation, Defendants asked Plaintiff if he would pay his
17 daughter's financial obligation.

18 21. Plaintiff responded that it was her debt and to stop contacting him.

19 22. Upon information and belief, Defendants requested Plaintiff pay his daughter's
20 debt for the intended purposes of harassment and/or subjecting him to emotional abuse.

21 23. Upon information and belief, Defendants were calling Plaintiff with the use of an
22 automated dialing system.

23 24. Plaintiff never consented to Defendants calling him.

1 32. Section 1692e(10) of the FDCPA prohibits the use of any false representation or
2 deceptive means to collect or attempt to collect any debt or to obtain information concerning a
3 customer.

4 33. Defendants violated §§ 1692e, 1692e(2)(A), and 1692e(10) of the FDCPA when
5 it sought to collect a debt from Plaintiff that Plaintiff does not owe, when it represented that
6 Plaintiff owed the debt, when it demanded Plaintiff pay his daughter's financial obligation, and
7 when it engaged in other deceptive or misleading conduct.
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10 **COUNT III**
11 **DEFENDANTS VIOLATED THE TELEPHONE CONSUMER PROTECTION ACT**

12 34. Section 227(b)(3)(A) of the TCPA authorizes a private cause of action for a
13 person or entity to bring in an appropriate court of that state "an action based on a violation of
14 this subsection or the regulations prescribed under this subsection to enjoin such violation."

15 35. Section 227(b)(3)(B), of the Act authorizes a private cause of action for a
16 person or entity to bring in an appropriate court of that state "an action to recover for actual
17 monetary loss from such a violation, or to receive \$500 in damages for each such violation,
18 whichever is greater."

19 36. A non-debtor has a vastly greater privacy interest from debt collection telephone
20 calls to a cellular telephone than an individual who is a debtor. Watson v. NCO Group Inc., 462
21 F.Supp.2d 641 (E.D. Pa. 2006.)

22 37. Despite the fact that Plaintiff is a non-debtor who never consented to Defendants
23 making calls to Plaintiff's cellular phone, upon information and belief, Defendant placed non-
24 emergency calls to Plaintiff's cellular telephone without Plaintiff's consent.
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1 38. The Act also authorizes the Court, in its discretion, to award up to three (3) times
2 the actual damages sustained for violations.

3 39. Here, upon information and belief, Defendants regularly placed non-emergency,
4 automated calls to Plaintiff's cellular telephone, using a pre-recorded or artificial voice.

5 40. Defendants did not have Plaintiff's express consent prior to contacting him on his
6 cellular telephone using an automatic telephone dialing system or pre-recorded or artificial voice.

7 41. Defendants' conduct violated §227(b)(1)(A)(iii) of the TCPA by making any call
8 using any automatic telephone dialing system or an artificial prerecorded voice to a telephone
9 number assigned to a cellular telephone service.
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12 **COUNT IV**
13 **DEFENDANTS VIOLATED §§ 392.302(4) 392.303(a)(2) OF THE**
14 **TEXAS FAIR DEBT COLLECTION PRACTICES ACT**

15 42. Section 392.302(4) of the Texas FDCPA prohibits debt collectors from causing a
16 telephone to ring repeatedly or continuously or making repeated or continuous telephone calls,
17 with the intent to harass a person at the called number.

18 43. Defendant violated §§ 392.302(4) and 392.303(a)(2) when it called Plaintiffs
19 repeatedly and continuously, when it continued to call Plaintiff after he disputed the debt and
20 told Defendants' collectors they had to contact his daughter, when it continued to call Plaintiff
21 after having knowledge that it was calling the wrong person, and when it engaged in other unfair
22 conduct.
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25 WHEREFORE, Plaintiff, EDDIE WHITE, respectfully prays for a judgment as follows:

- a. All actual damages suffered pursuant to 15 U.S.C. § 1692k(a)(1);
- b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- c. All reasonable attorneys' fees, witness fees, court costs and other litigation costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3) and Tex. Fin. Code § 392.403(b);
- d. Statutory damages of \$500.00 for each violation of the TCPA, pursuant to 47 U.S.C. § 227(c)(5)(B); and
- e. Any other relief deemed appropriate by this Honorable Court.

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, EDDIE WHITE, demands a jury trial in this case.

RESPECTFULLY SUBMITTED,

DATED: 11/13/13

KIMMEL & SILVERMAN, P.C.

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